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BULLETIN

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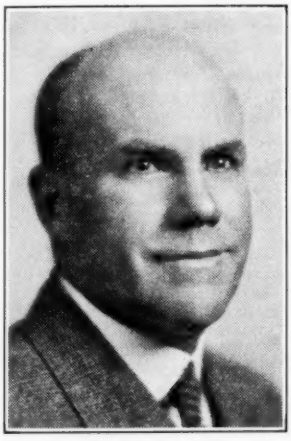
EDWARD D. LYMAN

President of the Los Angeles Bar Association 1935-1936



EDWARD D. LYMAN

LEADERS of organizations are made — not born. Those factual elements which go into the making of every leader are education, thorough training in the profession or activities of the group, participation in affairs of business, a sympathetic understanding of human nature, determination, executive ability, a healthy, vigorous mind, a well rounded judgment that comes from a mixture of all of these, and last but not least, the faculty of carving out of his busy life a sufficient amount of time to enable him to mingle with his fellowmen in social affairs. Ed Lyman has all of these.

Mr. Lyman was born in Virginia City, Nevada, November 5, 1881. He attended the public schools of Nevada, received his A.B. degree from Stanford University and his LL.B. degree from the University of Southern California, at which time he was employed by the law firm of Lee, Scott, Chase & Valentine. In 1910 the firm of Chase, Overton & Lyman was formed, which firm, in 1915, became Overton, Lyman & Plumb.

It may be consistently said that Mr. Lyman is known throughout the state and nation for his executive ability. He is a director of J. W. Robinson Company, Farmers & Merchants National Bank, Midwick Country Club, John M. C. Marble Company, and is a director and vice-president of the American Capital Corporation and Pacific Southern Investors, Inc. However, do not let this formidable array of directorships mislead you into believing that his entire time is devoted to money making proclivities—far be it from such—he is a member of the Board of Trustees and Executive Committee of the Southwest Museum, a member of the Board of Fellows Claremont College, a member of the Executive Committee of Southern California Symphony Association, and devotes a great deal of time to other similar organizations.

It would seem from this statement of activities that the man who said "If you want a thing done, give it to a busy man to do" was about 100% correct.

The good old ship of state is about to embark upon another year's cruise with Ed Lyman at the helm. We are proud of him and we here and now pledge our full support.

Los Angeles Bar Association Bulletin

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Official Publication of the Los Angeles Bar Association. Published the third Thursday of each month. Entered as second class matter August 8, 1930, at the Postoffice at Los Angeles, California, under the Act of March 3, 1879.

The Los Angeles Bar Association's Annual Meeting and Installation of Officers will be held at University Club, 614 South Hope St., at 6:30, Thursday Evening, Feb. 27, 1936

Let's all get together and hear the Swan Song of the retiring officers—meet Ed Lyman, the new President, and the incoming officers, give them a big send-off, and start them on their way.

A Suprise for You!

LEO CARRILLO

What more can we say? The whole nation claims this internationally famous and beloved son of Southern California, but he belongs to us and we are proud of him and his fame.

THAD HARVEY

Famous tenor of operatic and concert fame will sing.

Informal. Bring your guests.
$1.25 per plate.

REX HARDY
Program Chairman.

Do Motorists Pay Taxes? Read 'Em and Weep!

By Ivan Kelso, General Counsel Automobile Club of So. California

ARTICLES and speeches about the enormity and wickedness of taxes are so numerous and so alike that some special circumstance or condition should exist to justify at this time a discussion of taxes which are paid by the motorist. Unhappily such special circumstance or condition exists as will appear in that which follows.

The following device was used in a recent article on this subject by Farnsworth Crowder as a means of introduction and emphasis:

TO John G. Motorist:

FROM the Government of the United States and the forty-eight Commonwealths thereof and the several counties, municipalities and towns therein,

"ONE Motor-vehicle tax bill,

"FOR the construction, maintenance and patroling of highways, for the relief of the unfortunate, for schooling the young, for the erection of monuments, jails and pest houses, for the propagation of oysters, for the harnessing of floods, for the support of credit, the liquidation of bonded debt and the balancing of embarrassed budgets, etc., etc., and so forth,

"FOR the year of our Lord, Nineteen hundred thirty-six,

"FOR the fantastic sum of One billion two hundred fifty millions of dollars ($1,250,000,000.00), an amount equal to one-eighth of the anticipated national tax revenue, Federal, State and local, for the year in question,

"PAYABLE on or before midnight December 31, 1936, as the first, the compulsory levy on the motoring budget of the Republic."

Motor Taxes Listed

We have become so accustomed recently to talk of taxes in terms of billions of dollars that we are not much impressed when we are told the motorists of the nation will pay this year by way of a long list of varied taxes only *one* and a quarter billion dollars. We say, "That's singular. We are so used to the plural." Perhaps listing the names of the taxes will make some impression:

Motor vehicle registration fees.
Motor vehicle weight fees.
Motor vehicle personal property taxes.
Motor vehicle fuel taxes—Federal, State and municipal.
Motor vehicle operating privilege taxes (Chapter 362, Statutes of 1935).
Motor vehicle sales taxes
Motor vehicle use taxes (Chapter 361, Statutes of 1935).
Municipal license taxes on use of commercial motor vehicles.
Motor vehicle transportation taxes.
Motor vehicle manufacturers' tax (Federal).
Motor vehicle accessories' tax (Federal).
Tax on inner tubes (Federal).
Tax on lubricating oils (Federal).
Tax on crude petroleum.
Tax on refining of crude petroleum.

I have no doubt several important taxing measures have been omitted, and no reference is made above to that unknown but vast sum contributed by motorists by way of fines and forfeitures. "Surely," someone says, "that sum cannot be considered in a discussion of motor vehicle taxes!" But unfortunately the truth is that a great part of what is collected by way of fines and forfeitures amounts actually to the collection of license taxes.

Still More Taxes

If we are not impressed by a statement of the total amount of the taxes collected from the motorist, or by a recital of the various devices resorted to in making these levies, possibly noting the uses to which these revenues are devoted will attract attention.

Highway maintenance and betterment.
Highway patrols.
Highway lighting.
Landscaping adjacent to highways.
Relief to assessment districts.
Relief to unemployed.
Educational purposes.
Propagation of oysters.
Building and maintenance of jails, pest houses, hospitals.
Erection of monuments.
Flood control.
Service of highway bonds issued years ago.
First aid expense.
Irrigation projects.
General governmental expense.

Again the list is incomplete.

The motorist, bad as is his plight, is threatened imminently not only with additional diversified uses for the taxes now paid by him, but actually with new and heavier levies. This is what was meant when I said above that a special condition or circumstance exists which justifies this article. *It is addressed particularly to lawyers, not so much because they are motorists as because they are leaders of thought and movements in our governmental and civic spheres and, if they can be convinced that the motorist has been and is now being unjustly dealt with by governmental taxing agencies and that further injustices impend, they will act promptly and effectively to ward off the threat and end the abuse.*

Some Taxes Are Sound

Two general principles of taxation are widely accepted as sound and equitable —ability to pay theory—special benefit theory. Usually the first principle is resorted to in order to raise revenue to defray the cost of general government and the second to pay the cost of licensing for the purpose of regulation, or to buy special benefits not enjoyed by the public generally. All who own motor cars contribute as other citizens do to the cost of general government and, in addition, they pay huge sums for the registration and regulation of the use of their vehicles and further huge sums to build and maintain streets and highways on which to operate their vehicles.

If the special levies for special benefits are huge, motorists can blame no one but themselves as they possess the means, in theory at least, of limiting their benefits to what they are willing to pay for. It is when the motorist is asked to pay not only for general governmental costs as all citizens do, and not only for special benefits received as he should, but, in addition, special taxes not levied upon all classes or persons in general, and then see such special taxes used for general governmental purposes that he cries out "Unfair!" and seeks aid and redress for his wrongs.

How far shall taxing agencies be permitted to go in their constant search for new sources of income? Shall they never be forced to cease and instead retrench? In four states motorists have found it advisable, in fact necessary, to limit by constitutional provision the things for which revenues obtained from motor vehicle owners may be expended, and in other states they are about to make similar efforts. California motorists have never attempted this, and it is to be hoped they will never need to.

Imminent Danger

I had a purpose in writing this article just now and it is time I stated it. In recent years various groups and interests have seen new sets of taxes devised and imposed and each time all of those groups and interests which were not immediately affected by the particular effort offered their jocular condolences to the unhappy victims currently affected. Over a period all were affected. They were taken on one or two at a time and before they knew it all were beaten. The time is now at hand when all such groups and interests must regard any effort to levy new or heavier taxes on any group or interest as an effort to tax all. Only by such concerted action can any one group or interest, and eventually all groups and interests, prevent new and increased taxes. Lawyers chiefly represent these groups and interests both before boards of directors and in legislative halls. It lies in their power in large part to say whether tax levies shall mount or a halt be called.

The motorist is in imminent danger. The so-called "in lieu" tax (Chapter 362, Statutes of 1935) collected by the Department of Motor Vehicles, a portion of which is returned to the cities and counties, has proved displeasing to some of the cities and counties because they share on a population basis, whereas the tax displaced was on a per vehicle and ad valorem basis. Some of the cities now threaten a local license tax and, if one city succeeds, all will follow regardless of whether they have suffered or gained by the change. Thus my purpose is to acquaint those lawyers not in touch with the situation with the extent of the tax burden borne by the motorist; to call their attention to the many inequities existent in the present system and particularly to enlist their aid and that of all lawyers in an effort to stop further impositions.

A. B. A. Committee on Cooperation with Press Radio and Bar Against Trial Publicity

Chicago, February 12—(Special)—President William L. Ransom of the American Bar Association announced today that Newton D. Baker, of Cleveland, Ohio, former Secretary of War, has accepted the Chairmanship of the Association's Special Committee on Cooperation Between the Press, Radio, and Bar against publicity interfering with fair trial of judicial and quasi-judicial proceedings. The creation of this Special Committee to define standards to be recommended to lawyers, newspapers, and radio broadcasters in the matter of publicity as to Court trials is an outcome of the incidents arising in the course of the Bruno Hauptmann trial and various proceedings before governmental boards and bodies, and it is hoped that such standards can be made effective through rules of Court or through legislation.

The other members of the Committee, as announced by the Association today, are

J. W. Farley, Boston lawyer and newspaper publisher;
John G. Jackson, of New York;
Merritt Lane, of Newark; former Chancellor of New Jersey;
Oscar Hallan, former Associate Justice of the Supreme Court of Minnesota; dean of the St. Paul College of Law;
Giles J. Patterson, of Jacksonville; former president of the Florida Bar Association.

It is deemed likely that the National publishers and editorial associations will cooperate with the Committee constituted by the American Bar Association, and that the radio broadcasters will likewise take part in the effort to see whether practicable standards can be formulated and made effective.

"The Chairman and members of this Special Committee," declared President Ransom of the Association today, "have undertaken its difficult tasks as a matter of high public duty. Obviously the lawyers should take the lead in this matter, to put their own house in order. The Courts can help greatly, through their control over the conduct of lawyers as officers of the Court."

Judge Ransom added that the questions to be considered by the Committee are in no sense limited to those arising out of the trial of Bruno Hauptmann. "The fact is," said he, "that although the incidents alleged as to the Hauptmann trial received wide attention and discussion, they were not solitary or aggravated. The real problem goes much deeper and reflects a general trend. Both in hearings before governmental boards and bodies and in trials of civil and criminal cases, the processes of publicity are often resorted to, in order deliberately to create atmosphere prejudicial to fair and impartial hearing and determination on the merits. The integrity and impartiality of the trial is deliberately destroyed through a barrage of publicity 'releases' giving a biased and interested view of the issues pending. The rights of persons and property cannot be fairly determined when the atmosphere of trial is thus poisoned by the wilful circulation of prejudicial publicity.

"It may be that the Courts and the lawyers could and should act to end these abuses, through suitable rules and vigorous action against offenders. The cooperation of the press and radio is needed, in determining what those disciplinary standards should be. Excessive and prejudicial publicity is prevented from interfering with fair trials in England. The United States needs to find the feasible way of accomplishing the same result here. The new Committee of the American Bar Association, under Mr. Baker's sure-footed leadership, may be able to help.

Some Conflicts in the Law of California

By Herman F. Selvin of the Los Angeles Bar

EVERY lawyer is familiar with the fact that even within one jurisdiction conflicting decisions on some particular point may be found. That such a situation is undesirable admits of little doubt. Opinions may and do reasonably differ as to which of two opposed rules is preferable. Once the choice is made, however, no one will seriously deny that it should be of uniform application throughout the state.

It is the purpose of this article to note a few instances in which a direct conflict exists in the decisions of our own appellate courts. A complete enumeration is not attempted. Nor is any consideration given to the probable causes of the conflict.[1]

Striking Differences

Perhaps the most striking difference of opinion is that which exists between the Los Angeles and San Francisco Appellate Departments of the Superior Court on the question of garagemen's liens. By statute one who stores an automobile is given a possessory lien on the car for his charges.[2] Frequently, however, the question arises as to whether this lien is waived by a temporary relinquishment of possession, as, for instance, when the owner of the car withdraws it for use during the day and returns it for storage at night. In San Francisco a temporary withdrawal of this sort does not waive the lien for charges prior to the withdrawal.[3] In Los Angeles, however, it does.[4] In arriving at this conclusion the Los Angeles Appellate Department took notice of the prior decision in San Francisco but refused to follow it.[5] It is not necessary to take any position on the merits of the legal problem involved in these cases to enable one to say that the existence of the conflict is to be regretted.

A similar situation, and one of great practical moment, is found in the application of the statute of frauds to corporation contracts. A corporation, of course, can act only through agents. Does the general rule that an agent's authority must be written when the contract which he executes for his principal is required to be in writing, apply to corporations?[6] Division One of the District Court of Appeal for the First Appellate District has recently answered this question in the negative.[7] The trend of authority, said that court citing *McCartney v. Clover Valley etc. Co.*,[8] is towards making an exception of the cor-

1. For the most part the conflicts referred to in this article arose knowingly, *i. e.*, because of the conscientious inability of one court to follow the decision of a coordinate tribunal. Manifestly, the remedy, in this type of cases, lies in the creation and proper exercise of a supervisory power in some higher court. In some cases, however, the conflict is created apparently because the contrary authorities were not properly brought to the court's attention.

2. *Civil Code*, Sec. 3051a.

3. *Pacific States Fin. Corp. v. Freitas* (1913) 113 Cal. App. (Supp) 757, 295 Pac. 804; *General Motors Acceptance Corp. v. Silva* (1931) 113 Cal. App. (Supp.) 773, 295 Pac. 810.

4. *C. I. T. Corp. v. Biltmore Garage* (1934) 3 Cal. App. (2d) 757, 762, 36 P. (2d) 247.

5. In the case of the Appellate Departments of the Superior Courts there is, at present, no method of eliminating conflicts except by legislative action, since each court is independent of the other, and apparently no higher court has supervisory jurisdiction over them. [*Code of Civil Procedure*, Secs. 77A, 77B *Const.*, Art. VI, Sec. 5.]

6. *Civil Code*, Secs. 1624, 2309.

7. *Carrier v. Piggly Wiggly* (1936) 84 Cal. App. Dec. 111, 112.

8. (1916) 232 Fed. 697.

porate contract.[8] About a year earlier, however, the District Court of Appeal for the Third Appellate District (also citing the *McCartney* case but refusing to follow it) held exactly to the contrary.[9] And even before that decision, Division Two of the First District had ruled that the statute of frauds applied to corporate agents as well as to any other agent.[10] A California lawyer may well be forgiven if, in the present state of the authorities, he is unable to give a definite opinion to his client on this question.

Authorized Emergency Vehicle

This same lawyer may not fairly be charged with ignorance if he is unable to tell a client whether a municipality is liable to respond to one who has suffered damage by reason of the operation of an "authorized emergency vehicle."[11] Division Two of the District Court of Appeal for the First Appellate District has held that no right of action against the state or municipality is conferred by the applicable statute.[12] In the Third Appellate District, however, the same statute is said to impose liability upon the governmental body.[13] It seems, therefore, that until such time as the conflict may be resolved by the Supreme Court

9. *Corporation of America v. Harris* (1935) 5 Cal. App. (2d) 452, 458-9, 43 P. (2d) 307.

10. *Frudder v. Peppers Fruit Co.* (1932) 126 Cal. App. 544, 546, 14 P. (2d) 834.

11. *Vehicle Code*, Sec. 400 (formerly *Civil Code*, Sec. 1714½.)

12. *Armas v. City of Oakland* (1933) 135 Cal. App. 411, 418 *et seq.*, 27 P. (2d) 666 28 P. (2d) 422, (hearing by Supreme Court denied, Jan. 22, 1934); *Tuten v. Town of Emeryville* (1934) 139 Cal. App. 745, 35 P. (2d) 195 (hearing by Supreme Court denied, Sept. 13, 1934).

13. *Lossman v. City of Stockton* (1935) 6 Cal. App. (2d) 324. No application for a hearing by the Supreme Court was made.

or the Legislature, the rights of injured persons under this statute will depend on an accident of geography.

Installment Contracts

Not infrequently a lawyer may be called upon to determine the effect of a clause in an installment contract providing that on the failure to pay any installment the money previously paid shall be forfeited and the contract terminated. His answer to that question may very well depend on which of two opposing lines of decisions he finds in his research. The larger number of cases, he will discover, hold that under such a clause the contract is not automatically terminated, but the non-defaulting party has the option either to terminate or to compel continued performance.[14] Contrary decisions, however, are available.[15] It is true that these latter decisions have been distinguished;[16] but the distinction is hard to defend since the contracts construed in each instance were practically identical in this particular.[17] There is in fact a real, though perhaps unrecognized, conflict on this problem.

Procedural Differences

In the field of procedure instances of the same sort of conflict also exists. For instance, it has been generally held that the parol evidence rule is a rule of substantive law and that, consequently, evidence tending to vary a written contract by parol is ineffective to accomplish that result even though admitted without objection.[18] But the rule has not always been observed. At least three decisions may be found in which a contract was varied by parol because the testimony to that end was permitted to be given without objection.[19]

Undoubtedly other examples of conflict could be added to those given. Their occurrence is probably inevitable under an appellate system as widespread and as decentralized as ours. Knowledge of their existence, however, may serve to accomplish their ultimate elimination, either by later decision or by legislative action—and, what is perhaps more important, may be the first step towards such a revision of our appellate system as will tend to minimize their occurrence in the future.

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14. *Wilcoxson v. Stitt* (1884) 65 Cal. 596; *Rip Van Winkle Wall Bed Co. v. Holmes* (1932) 216 Cal. 463, 465, 14 P. (2d) 754; *Smith v. Mohn* (1891) 87 Cal. 489, 25 Pac. 696; *Newton v. Hull* (1891) 90 Cal. 487, 27 Pac. 429; *New Richmond Land Co. v. Ivanovich* (1921) 52 Cal. App. 222, 198 Pac. 221; *Burg Bros. v. Bercut* (1925) 73 Cal. App. 114, 238 Pac. 166; *Central Oil Co. v. Southern Ref. Co.* (1908) 154 Cal. 165, 97 Pac. 177.

15. *Calif Land Sec. Co. v. Ritchie* (1919) 40 Cal. App. 246, 254 *et seq.*, 180 Pac. 625; *Beckwith-Anderson Land Co. v. Allison* (1915) 26 Cal. App. 473, 147 Pac. 482; *Gordon v. Swan* (1872) 43 Cal. 564.

16. E. g., *Burg Bros. v. Bercut, supra,* n. 14; *Wilcoxson v. Stitt, supra,* n. 14.

17. For instance, in *Wilcoxson v. Stitt, supra,* n. 14, the clause read:

> "In the event of failure to comply with the terms and all the conditions hereof by the party of the second part, the party of the first part shall be released from all obligations . . . and the said party of the second part shall forfeit all right thereto, and this agreement shall be void."

In *Calif. Land Sec. Co. v. Ritchie, supra,* n. 15, it read as follows:

> ". . . if . . . the party of the first part refuses to . . . carry out this contract, then . . . the money paid . . . shall be forfeited and belong to the parties of the second part as liquidated damages, and thereupon this contract becomes null and void."

18. *Harding v. Robinson* (1917) 175 Cal. 534, 540-1, 166 Pac. 808; *Fogler v. Purkiser* (1932) 127 Cal. App. 554, 559-60, 16 P. (2d) 305; *Russell v. Stillwell* (1930) 106 Cal. App. 88, 93, 288 Pac. 785; *Middlecamp v. Zumwalt* (1929) 100 Cal. App. 715, 723-4, 280 Pac. 1003; *Rottman v. Hevener* (1921) 54 Cal. App. 474, 479, 202 Pac. 329; *Dollar v. International Banking Corp.* (1910) 13 Cal. App. 331, 336, 343-4, 109 Pac. 499.

19. *Inner Shoe Tire Co. v. Tondio* (1927) 83 Cal. App. 689, 693, 257 Pac. 211; *Tebbs v. Weatherwax* (1863) 23 Cal. 58, 60; *McComish v. Kaufman* (1919) 43 Cal. App. 507, 510, 185 Pac. 476.

Reconciling Decisions Involving Statute of Limitations in Actions for Fraud

By Richard A. Turner, of the Los Angeles Bar

AN action for relief on the ground of fraud may be commenced in three years after the discovery of the facts constituting the fraud. (Sec. 338, subd. 4, C. C. P.)

This prompts the query: What constitutes discovery?

Many cases have held that a person in entering into a contract may rely on positive statements of fact, the truth of which are unknown to him, made to him by the other party to the agreement or by his agent, even though such statements are at variance with information readily available to him or which is contained in public records. (See *Edwards v. Sergi,* 137 Cal. App. 369; *Lillis v. Silver Creek etc. Co.,* 21 Cal. App. 234.)

Assuming that he may so rely in the first instance, the real question to be determined is, How long may he continue to rely, without making any effort to avail himself of the information at hand? What diligence is required of him in discovering the fraud?

If there is no limit to the time during which such reliance may be indulged, then, for all practical purposes, there is no limitation upon the time within which such actions may be commenced, no equitable rule of laches is applicable, and a premium is thus offered on negligence.

Assuming that a person so defrauded is required to use due diligence in discovering the fraud, where it is a matter of public record or consists of other information to which he has ready access, within what time is he required to make the inquiry?

Discovery of Fact

While the writer does not claim to have exhausted the authorities and makes no pretense of here attempting to cite the many California cases touching upon the subject, in reviewing many of those cases which at first appeared to be somewhat in conflict with each other, the following question has suggested itself to him:

> **May not practically all of those cases be reconciled if a rule be applied by which the defrauded party is required to make the discovery of facts contained in public records, or otherwise readily available to him, within three years after the perpetration of the fraud?**

Assuming that the discovery of such facts is made on the last day of the three-year period, such party would have under section 338, subd. 4 of the Code of Civil Procedure, an additional three years within which to commence his action. If such a rule can be sustained the defrauded party will have never less than three and never more than six years, where the information is thus available, within which to commence his action.

While our courts have not, to the knowledge of the writer, specifically discussed or decided this exact question, an examination of the cases should convince the practitioner that our courts have had some such rule in mind in some of the

cases decided. (See *People v. San Joaquin etc. Assn.,* 151 Cal. at 807; *Daily Tel. Co. of Long Beach v. Long Beach Press Pub. Co.,* 133 Cal. App. 140; *Haley v. Santa Fe Land Imp. Co.,* 5 Cal. App. (2d) 415.)

In *Daily Tel. Co. v. Long Beach Press Pub. Co., supra,* the court, at page 144, used this language:

> "The circumstances alleged were sufficient to excuse the appellant Roberts from reading the instrument *at the time of its execution.*"

Again at page 145 we find this language:

> "In analyzing this allegation we find nothing to show that the information leading to the discovery was not available to the appellant Roberts *prior to the running of the statute.*"

And again on the same page we find:

> " 'It is not enough to assert merely that the discovery was not sooner made; *it must appear that it could not have been made by the exercise of reasonable diligence.* And that which reasonable diligence would have disclosed, plaintiff is presumed to have known; means of knowledge in such a case being the equivalent of the knowledge which it would have produced.' "

And again the court quotes from a prior case, at pages 145-146:

> " 'Any other conclusion would permit a defrauded party, *having at all times the means of knowledge at his disposal,* to complain of such fraud *long after the running of the period of limitations* by the simple expedient of alleging that an investigation *within three years* of the commencement of suit uncovered the fraud. *This would place a premium on dilatory tactics and would relieve a party of exercising that diligence required by the law.*"

The court further quotes with approval from the Supreme Court of the United States the following language, at pages 146-147:

> " 'Parties cannot thus, by seclusion from the means of information, claim exemption from the laws that control human affairs and set up a right to open up all the transactions of the past. The world must move on, and *those who claim an interest in persons or things must be charged with knowledge of their status and condition and of the vicissitudes to which they are subject.*' " (Emphasis added.)

Suggested Rule

The suggested rule, of course, would have no application where the fraud had been concealed, as in *Kane v. Cook,* 8 Cal. 449, and in *Lightner Milling Co. v. Lane,* 161 Cal. 689. There might also exist such a confidential or fiduciary relationship between the parties that the duty to consult such records or other readily available information might be excused for a longer time than three years; but where the parties have dealt free from such relationships, it would seem reasonable to require the defrauded party to avail himself of the information at hand within three years after he executed the agreement in reliance upon the false representations. (See *Norris v. Haggin,* 34 L. Ed. 424, a California case, and *Burling v. Newlands,* 4 Cal. Unrep. 940.)

The suggested rule may or may not have any recognized existence in this state, but the writer believes it is worth considering by the practitioner who may be somewhat confused by what otherwise might appear to be inconsistencies in the decisions of our higher courts. By the application of the rule, the writer has been able to reconcile any apparent conflict in all California cases thus far examined.

Unprecedented Honor Paid St. Louis Bar

IN the good old days the lawyer expected, and appeared to relish, a certain amount of heckling. His freedom to do just as he pleased was so assured that he could well afford to grin and bear criticism. Those were the times, not so far distant, when very respectable lawyers said that they did not care about easy admission because the half-prepared young practitioners made more business for the established members of the profession. Perhaps it was easy admission to practice which, in the course of time, brought about an entirely different attitude, one which took public interest into consideration. Perhaps it was criticism in the public press, some fair and some unfair, which stimulated the change.

That there has been a development of conscience toward public interests was dramatically proved when last fall the St. Louis Bar Association was awarded the city's certificate of civic merit, carrying with it a cash contribution of one thousand dollars to be expended for some worthy cause. This award, to say the least, was unprecedented. In the speech of presentation it was made clear that the Association was selected for this signal honor because of its activity in curbing unethical practices. And it was expressly stated that the Association had from the beginning given hearty support to the movement for domestic policing under supreme court authority and with practical machinery. The opportunity to perform the public services which merited distinction was created by the supreme court, which had the benefit of established technique for discipline in a number of integrated state bars. To the credit of this city Association its record showed support for the plan from its inception.

In a social and political system such as ours honest and competent criticism is absolutely essential. Without criticism sound policies cannot be developed. But there is another essential factor, which we have little developed, and that is public recognition of meritorious services. The St. Louis incident serves to demonstrate the constructive value of bestowing honors where they are deserved. We should have more of this. Every profession properly honors its own individual heroes, but for public appreciation we lack the machinery which exists in older nations. The bar cannot directly create such machinery. Nor can there be another incident similar to this, at least for a long time, but the bar associations must, for their own welfare, press on toward right ideals of public service. The enforcement of rules of conduct is only the beginning. There are now numerous openings for affirmative action, and a sufficient program of reform, to enable energetic bar associations to convince the public that traditional indifference is a thing of the past, and that the profession is definitely on the way to the fulfillment of its professed ideals. At present the foundations only are being laid. There will be hard campaigns in the future. The profession should strive to realize its ideals. Appreciation may rarely be bestowed as it was in St. Louis, but it will be manifested in ways vital to professional welfare.

New County Court House Plans

BELIEVE it or not, Los Angeles County is in a fair way to having a new courthouse! The Board of Supervisors, at their session on Thursday, Feb. 13, ordered a $4,000,000 bond issue for the new courts building and supplemental court and county office facilities, to be placed on the May 5 ballot.

Of course, the final decision is now up to the county's voters, but the fact that the bond issue was ordered on the ballot, is a big feather in the cap of Los Angeles Bar Association and the group which it sponsored—the Citizens New Courthouse Committee.

The courthouse committee included representatives of all the major civic organizations in its ranks and the credit for the success of its many weeks of campaigning, of course to its chairman, William A. Bowen, who resigned Jan. 24, and John G. Mott, who succeeded him.

The placing of the bonds on the ballot is dependent upon the further contingency of obtaining the assurance of a federal grant from the Public Works Administration in Washington of 45 per cent of the total cost of the courthouse project, but members of the courthouse committee declared the P.W.A. would readily accede to the request, which has already been filed.

The action of the supervisors contemplates an approximate expenditure of $8,000,000 for the main courthouse building and supplemental court and county office facilities in other cities throughout the county as may be deemed necessary after a survey by the Planning Commission and the Bureau of Efficiency.

The actual expenditure for the main courthouse will be about $6,500,000.

The building will contain some 800,000 square feet of floor area and will adequately house the superior and municipal courts, the county clerk's offices, the county law library, and will provide for four extra superior court courtrooms for expansion, as well as housing all other county offices now scattered in and about the civic center. The remaining money of the $8,000,000 will be alloted for the building of the supplemental facilities in other cities of the county.

Located on county-owned property in the area lying north of the Hall of Justice, the new courthouse will be an imposing addition to the Civic Center and an important step in carrying the Center to its ultimate development.

The boundary lines of the site are as follows:

Sunset Boulevard on the North; Temple Street on the South; Broadway on the West, and Spring Street on the East.

Chairman John G. Mott in one of the several appearances of his committee before the Supervisors, pointed out that the new courthouse will not impose any additional expense on the county's taxpayers, since the county is already paying a sizable sum for rentals on behalf of numerous offices located in private buildings.

The report which the Citizens New Courthouse Committee submitted to the Board of Supervisors in urging that the courthouse bond issue be placed on the ballot was based in turn on the report of a subcommittee appointed by the supervisors and consisting of three members of the citizens committee, three architects and three representatives of county departments.

These representatives were as follows: John G. Mott, Frank P. Doherty, R. L. McCourt, Myron Hunt, Donald Parkinson, Reginald Johnson, W. J. Fox and R. E. Schonerd.

Civic organizations represented in the Citizens New Courthouse Committee included the following: The Los Angeles Bar Association; The L. A Chamber of Commerce; the American Institute of Architects; the Civic Center Development League; the Downtown Business Men's Association; the Advertising Club, as well as banks, merchants and publishers.

Series of Bar Lectures at Public Library

C. E. McDOWELL, affectionately known by his fellow practitioners as "Charlie," several years ago made arrangements with the Los Angeles Public Library for a series of lectures, given at the Library under the auspices of the Los Angeles Bar Association. His arrangement established friendly relations between the Library and the Association, which have been enjoyed ever since.

The office of the Bar Association announces that a series of seven lectures will be given this Spring, by well known younger members of the Bar, sponsored by the Sociology Department of the Los Angeles Public Library, in the Central Library Lecture Room.

This year's program is as follows:

February 26
"Is a Lawyer Necessary?"
H. Sidney Laughlin, Esq.

March 11
"How Do Judges Decide?"
Maurice Saeta, Esq.

March 25
"Uncle Sam's Devil's Island"
Milford Springer, Esq.

April 8
"The Necessity for Uniform Divorce Laws"
W. I. Gilbert, Jr., Esq.

April 22
"Some Legal Consequences of Driving an Automobile"
Augustus F. Mack, Jr., Esq.

May 13
"Last Will and Testament of John Doe"
Robert F. Schwarz, Esq.

May 27
"Personal Identity"
Charles Crail, Jr., Esq.

Novel Method of Handling Motor Vehicle Cases in One Massachusetts County

Hon. Abraham E. Pinanski, in Boston Bar Bulletin

ON December 10, 1934, the Chief Justice of the Superior Court announced a plan for referring motor vehicle cases to auditors, and he then assigned members of the court in a number of counties to supervise and direct the operation of the plan. The "Notice to the Bar" stated the minimum requirements limited the appointments as auditors to lawyers who would agree to refrain from taking such cases during their period of service as auditors, and provided for the selection of the auditors from a list of nominees furnished by the county bar associations. It was also provided that all hearings before auditors should be conducted in orderly manner, without smoking, and in court houses whenever possible.

The *Bar Bulletin* asks for a statement of my "experiences in Norfolk County with respect to references to auditors" in 1935, the number of cases before auditors, the number of cases in which a party demanded a jury trial after auditor's report, and my views as to the practicability of the plan.

At the beginning of the year the writer explained the plan to the County Commissioners of Norfolk County and received their hearty cooperation in the form of a very substantially increased appropriation for auditors and the preparation in the Court House of several additional and appropriate hearing or court rooms.

The Court requested the Norfolk County Bar Association to nominate five members of the Norfolk bar as auditors, and received eight nominees, all of whom were appointed at one time or another. It should be noted that except for cases which had been advanced, we started trying those motor vehicle tort cases in the jury session in January 1935, in which the writ had been brought about 4½ to 5 years previously.

From January 15, when we got started, to June 6, 1935, 163 suits were referred to auditors. On June 13, 1935, the Court notified the bar that it would consider motions in any motor tort case in which the writ was dated prior to Jan. 1, 1935, and that such motions would be heard in July, August and September. Up to July 5, motions in 284 cases had been made. By Sept. 20, motions had been made in a total of 333 cases, of which 10 were denied, 10 were continued and references in 10 were revoked. By Sept. 20, of this total of 333, 124 cases had been settled, 91 of which were settled before the auditor's report and 33 after his report. In 11 additional cases, judgment was entered on the auditor's report, making a total of *135 cases finally disposed of up to Sept. 20, 1935.* In my opinion the increase in the number of motions was due in part at least, (1) to the increased confidence of the bar in the particular auditors, (2) to increased satisfaction with the results obtained, (3) to the realization that the mere reference of a case to an auditor presented an opportunity for discussion of possible adjustment, and (4) to the feeling that the hearings were conducted in court surroundings and with the dignity and decorum of a trial before the court.

On Oct. 14, 1935 the writer notified the members of the bar who had motor vehicle tort cases on the General List that there would be a call of such motor vehicle tort cases on the General List as were entered not earlier than April 1932 or later than March 1935, and stated that "this call is for the purpose of receiving and hearing motions for reference of such cases to auditors."

The call was held on Oct. 23, 1935, and motions in approximately 250 cases were received, about equally divided between plaintiffs and defendants, and in a number of cases motions by both parties. Up to Nov. 13, 1935, 566 cases had been referred to auditors. *Up to Dec. 31, 1935, references had been made in 603 cases* and motions in 45 cases had been filed where no reference had been made. *As of Dec. 31, 1935, 166 cases had been settled before report, 78 cases had been settled after report, judgment was entered on the report in 13 cases, and one case was tried to a jury after report, making a total of 258 cases finally disposed of in the calendar year.* In the single case tried to a jury the verdict was the same as the auditor's finding, for the defendant. Up to Dec. 31, 1935, reports had been filed in 199 cases, and in 76 of them reservation of issues and insistence upon jury trial had been filed.

The payments made to the auditors may be enlightening. The total paid to 9 auditors in 1935 was $6,266.68, for 233 cases referred to them, or an average of $26.89. Only one auditor received over $1,000 during 1935, and he received $1,007.93. Inasmuch as auditors must agree to refrain from taking motor vehicle cases, and so many cases are disposed of during hearings, it would seem to be fairer to them, if there were fewer auditors so that there would be more work for those who are retained.

As to the practicability of the plan, the Clerk, Mr. Worthington, is in entire accord with me in this statement:—the plan as operated in Norfolk County in 1935 has gone far in stirring up the stagnant part of the general jury trial list. Unquestionably, the volume of cases which lie unreached in the Norfolk general jury trial list from year to year has been reduced very materially by the activities under the auditor plan. This improvement should continue so long as the plan can be operated. If the plan met with any success in 1935 in Norfolk County, it was due very largely to the cooperation of the bar, the efforts of the auditors, and the clerk's office.

The plan for reference of motor vehicle tort cases is being continued during the year 1936, with the additional provision that the justices assigned to administer it in the several counties may from time to time call such portion of the trial lists or dockets as they deem expedient for the purpose of receiving and hearing motions for reference of such cases to auditors.

Fewer Law Books Urged

PRESIDENT WILLIAM L. RANSOM of the American Bar Association has just announced that Dean Roscoe Pound of the Harvard Law School has become the Chairman of the Association's Special Committee on Unnecessary Duplication of Law Books and Legal Publications, in place of Ex-Senator Arthur L. Scott of Nevada, who resigned on account of his professional work. William R. Roalfe of the Duke University Law Library, Durham, North Carolina, has accepted appointment as a member of the Committee to fill the vacancy caused by Dean Pound's elevation to the Chairmanship.

Mr. Roalfe is the president of the American Association of Law Libraries, which in 1936 for the first time will hold its annual convention in conjunction with the meeting of the American Bar Association. The Association of Law Libraries will convene in Boston on August 20th, and has also appointed this year a committee to cooperate with that of the American Bar Association to see what can practicably be done to reduce the unnecessary volume of law books and publications, and so reduce the burden of expense incident to the maintenance of law offices and law libraries.

Cooperations of Bar Associations

IN a recent report of a Special Committee of the New York Bar Association, appointed to observe the experience of bar organizations in other states, and to study the problem of coordination of effort between the New York Bar Association and other associations of lawyers, particularly the American Bar Association, findings and recommendations of interest to all lawyers were submitted. Among other things, the report says:

"This Committee reported last year that the American Bar Association had started a program for co-ordination of the bar and had received a grant from the Carnegie Foundation which it had matched, for the purpose of carrying out this work. A plan has now been worked out for tying bar associations throughout the land more closely together, and is being submitted to the members of the American Bar Association. This plan comes before the General Council of the American Bar Association in January and in such form as approved by it, will be submitted to the annual meeting of the American Bar Association at Boston in August, 1936.

> **"Every lawyer in the United States should devote some time and thought immediately to the subject of a representative and improved organization of the lawyers of the whole country. Such an organization is on the way. It will greatly affect the future of the legal profession in the United States and the standing and influence of every lawyer, in his relation to his clients and the public.**

"The lawyer who wishes to see such a forward step taken should do what he can to bring it about, as a member of his State and local Bar Associations, for it is only through their support that any plan, national in scope, can succeed. He ought to study the subject sufficiently to make up his mind what he thinks

should be the form of such a representative organization of the lawyers, and he ought to make his views known to those who are dealing with the subject. Likewise, the lawyer who is opposed to such a change in Bar organization should make known his views, and should be on hand to voice and vote his views, as a member of the American Bar Association and of the State and local Bar Organizations, wherever the subject is brought up for discussion and action.

"On June 30, 1935, there were 3,814 members of the American Bar Association in New York State, 2,355 of whom were members of the New York State Bar Association. In round numbers there are 28,000 lawyers in the State, of whom 5,000 are members of the New York State Bar Association. Aside from joint membership in both Associations, and the delegates who are sent to the Conference of Bar Association Delegates held concurrently with the annual meeting of the American Bar Association, which has no definite power or real relation to the decisions of association policies, there is no connection whatever between the New York State Bar Association and the American Bar Association; no organized means of expressing our opinion in the American Bar Association Council.

"The proposed plan reorganizes the American Bar Association so as to make it truly representative of, and responsive to, the profession as at present organized in the respective States, and to its membership in those States. President Ransom, in a recent address, said:

> 'To my mind, this American Bar Association belongs to the practicing lawyers of this country, and this American Bar Association can and be made whatever the lawyers of this country wish it to be.'

"If approved and adopted, the plan of the American Bar Association will vest the control and administration of that Association completely in a House of Delegates genuinely representative of a substantial majority of the lawyers of the whole country, with provisions for a referendum vote on questions of major policy. For each State, the members of the American Bar Association therein will elect one Delegate by mail ballot. In addition, each State Bar Association will be entitled to one or more delegates of its own choosing (no State more than four). Under indicated circumstances, a local Bar Association may qualify and elect a Delegate.

"The parity of the States, in the process of nominations, is preserved; but the nominations of officers and of State Delegates are required to be made and published well in advance of the annual meeting, with opportunity for independent nominations.

"The House of Delegates is made a truly representative body, not too large to function effectively, but with all phases of the Association work and membership brought together therein, along with Delegates of State and local Bar Associations whose members embrace more than half of the lawyers of the United States. *The participation of the State and Local Bar Associations will be voluntary and without commitment of sacrifice of autonomy.* Administration work of the Association between meetings will be conducted by a Board of Governors, elected by and from the members of the House of Delegates, with one elective member from each federal judicial circuit, together with the officers. Machinery is provided for practicable referenda to the whole Association membership, or to the membership of the State and participating local Bar Associations as well, to ascertain their views and wishes upon important questions of Association policy.

"The members of the Association attending an annual meeting will constitute the Assembly, whose sessions will be cleared of routine and reports and made attractive as well as useful in the ascertainment of the views of the members present, after discussion. The Assembly will also elect five members to represent it in the House of Delegates."

Unauthorized Practice News

ON November 20, 1935, Judge Jenkins of the Court of Common Pleas for Mahoning County, Ohio, filed his findings of fact and conclusions of law in *Judd, et al., v. The City Trust and Savings Bank, the Dollar Savings and Trust Company and the Mahoning Savings and Trust Company.*

The court's conclusions of law follow in full:

"1. That the preparation for others of wills, trust agreements or other legal instruments and contracts by which legal rights are secured is the practice of law.

"2. That the giving of advice in the conduct of negotiations looking to the drawing of such instruments, since such instruments require legal knowledge and skill of the highest order, is the practice of law.

"3. That corporations, including trust companies, are expressly precluded from practicing law.

"4. That an attorney employed by a corporation owes undivided loyalty to it, and cannot act as counsel or legal adviser to a patron of the corporation because he is subject wholly to the directions of his client and can enter into no privity with the patron, and further because, being an employe of the corporation, should he undertake to act as counsel for the patron, the corporation through him would be practicing law.

"5. That the giving of advice to patrons by a trust company, in connection with the preparation of their wills, trust agreements and other legal documents, or the preparation for patrons of such legal documents, by a trust company, through its agents, constitutes the practice of law by a corporation, and as such is illegal, even though the trust company in said documents is named or is to be named as executor, trustee or in some other fiduciary capacity, and even though such advice to and preparation of documents for such patrons is with their express consent.

"6. That the naming of a trust company as executor, trustee or in any other fiduciary capacity in a will, trust agreement or other legal document, does not constitute said trust company a party to said instrument in the sense of having a direct and primary interest therein.

"7. That a trust officer or attorney of a trust company who performs services in court in matters pending therein in connection with any trust estate for which such trust company is a fiduciary, or who prepares instruments for or gives advice upon legal matters in connection with any such trust estate, is rendering services as counsel for such estate and in so doing is illegally practicing law.

"8. That what a corporation is not authorized to perform in connection with the practice of law for others it is not empowered to hold itself out as authorized to perform. Therefore soliciting patronage for a trust company under any representation, either in writing, orally or otherwise that it will furnish advice or services in a form herein held to be the practice of law is illegal.

"9. That the right to practice law is a special privilege in the nature of a franchise, and the holder thereof may be protected by injunction from the invasion of the right thus vested in him, whether the transgressor is an individual or a corporation.

"10. That the plaintiffs are entitled to equitable relief from the practices of the defendant corporations in the form of an injunction restraining the defendants from practicing law by the drafting of wills, trust agreements and other legal documents for others, and from giving legal advice incident thereto to such others through the defendants' officers, employes and other agents, whether

attorneys at law or not, and whether or not the defendants are in said documents named as executors, trustees or in other fiduciary capacities."

Other Important Decisions

On October 14 the Chicago Motor Club was fined $1,000 and costs by the Illinois Supreme Court for contempt of court in that the club practiced law illegally by defending its members for traffic violations and other offenses involving motor vehicles.

The Supreme Court of Kansas considered in one opinion two cases against the Wichita Association of Credit Men, Inc., and held, in effect, that the practices indulged in by the collection agency constituted practice of law and should be enjoined.

A contract between a "Taxpayers' Association" and an individual which necessarily calls for legal services on the part of the "association" is void according to a decision by the Supreme Court of Oklahoma in *Crawford v. McConnell* (September 27, 1935).

A decree has been entered by the Middlesex Superior Court of Massachusetts perpetually restraining W. A. Graustein from practicing law. Mr. Graustein had been practicing in all the courts of Massachusetts for twenty years under the statute which permits any person of good moral character to appear in court for another if he is given a power of attorney in writing signed by the other.

On August 14, 1935, the justice of the Superior Court made the entry that Graustein was a professional attorney-in-fact and that a decree should be entered enjoining him from practicing law. It is understood that he will not appeal from this decision.

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